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827150-004-001
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FEDERAL COMMUNICATIONS COMMISSION
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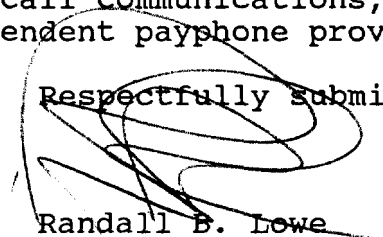
Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: In the Matter of Billed Party Preference for
O+ InterLATA Calls (CC Docket No. 92-77)

Dear Ms. Searcy:

Enclosed for filing in the above-referenced matter are an original and six (6) copies of Comments in Opposition to Proposed Rulemaking on behalf of One Call Communications, Inc. d/b/a "Opticom," and certain independent payphone providers.

Respectfully submitted,


Randall B. Lowe
Attorney for
One Call Communications, Inc.
d/b/a Opticom

Enclosures

cc: Service List

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Billed Party Preference
for 0+ InterLATA Calls

CC Docket No. 92-77

COMMENTS IN OPPOSITION TO NOTICE OF PROPOSED RULEMAKING

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July 7, 1992

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SUMMARY

One Call Communications Inc. d/b/a OPTICOM ("Opticom") and certain independent payphone providers ("IPPs") oppose the Commission's proposed rulemaking regarding billed party preference ("BPP") for 0+ interLATA calls.

The Commission argues that BPP will create more understandable 0+ calling for consumers, focus competition in operator services towards end users, increase parity among OSPs, and act pro-competitively for OSPs and IPPs. Unfortunately, and despite its superficial appeal, BPP will be more confusing for consumers who, among other things, will face diverse dialing arrangements. BPP will also restrict, if not demolish, IPP and OSP parity and competition and increase LEC monopolization of operator services. Moreover, this proposed rulemaking inappropriately restricts the use of customer premises equipment, is premature and defies the President's moratorium on unnecessary and anti-competitive agency regulations.

In the final analysis, and cutting through the rhetoric, BPP is nothing more than an attempt to protect the financial interests of such carriers as Bell Atlantic from the possible consequences of an antitrust decree, which is the product of its own actions. The Commission's attempt to transform this private motive into a public good is completely unjustified and belied by the record in this proceeding.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
Billed Party Preference
for 0+ InterLATA Calls

CC Docket No. 92-77

COMMENTS IN OPPOSITION TO NOTICE OF PROPOSED RULEMAKING

One Call Communications, Inc., d/b/a OPTICOM ("Opticom"), by its attorneys, and on behalf of certain independent payphone providers ("IPPs"), a list of which is attached hereto, hereby comments on and opposes the adoption of an automated billed party preference ("BPP") routing system for 0+ interLATA payphone traffic.

I. INTRODUCTION

It is the position of Opticom that the Notice of Proposed Rulemaking adopted on April 9, 1992 in this matter ("NPRM") is a chart for an unnecessary course that is founded on incorrect, speculative premises and self-serving financial interests that will result in the ruin of at least two competitive marketplaces while causing undue confusion for the ratepayer. In short, the staggering "costs" of the BPP far outweigh any perceived or actual benefits.¹

¹ Although several of the arguments contained herein were emphasized during the petition stage, many of them bear repeating. This is especially so since the Commission, in tentatively supporting BPP, has failed to address many of
(continued on next page...)

On April 13, 1989, Bell Atlantic filed a Petition for Rulemaking with the Commission requesting that BPP be made mandatory for all pay telephone 0+ interLATA calling nationwide. Bell Atlantic based its request on at least two faulty premises: (1) that a United States District Court mandated implementation of BPP by the BOCs and the General Telephone Operating Companies; and, (2) that the Commission can and should protect Bell Atlantic's private, financial interests. The Bell Atlantic petition totally ignores the issue of whether BPP is in the public interest and necessary or appropriate.

The District Court's consideration and rejection of BPP as only one of several possible options for introducing competition into the public telephone market and the application of that finding as falling within the context of an antitrust decree directed at Bell Atlantic disproves Bell Atlantic's first premise. The fact that the Commission cannot and should not protect Bell Atlantic's private, financial interests destroys the second premise. Moreover, Bell Atlantic admitted that BPP will increase call processing time and require customers to deal with two operator systems to make a single call, Petition at 5-6, and since the filing of the Petition the Congress and the Commission have taken numerous and significant steps to cure any of the

¹(...continued from previous page)
these arguments, or mischaracterizes them, throughout the NPRM.

problems attendant to the operator services industry that BPP may tend to cure.

The Commission has failed to acknowledge these substantial defects in the BPP plan as proposed by Bell Atlantic and, instead, has proceeded with this rulemaking proceeding on the following premises:

- 1) Operator service calls from public phones are complex and confusing to consumers, and BPP will allegedly make operator services more "user friendly." NPRM at 7-8. (Under BPP, callers will be able to make all of their operator-assisted calls on a 0+ basis, and with the knowledge that the OSP will be the one with whom the billed party wishes to do business. NPRM at 8.² The Commission also asserts that BPP would preserve all of the options that callers currently have with regard to OSP choice. Id.)
- 2) Under BPP, callers would not have to concern themselves with reaching their carrier all the time. NPRM at 9. (Callers could dial on a 0+ basis and automatically reach the billed party's carrier.³ Id.)

² As in the NPRM, the acronymn "OSP" is used herein to mean both operator service providers and interexchange carriers. See NPRM at 2, note 1.

³ The Commission does admit, however, that "since billed party preference could apparently not be deployed for at least a few years, callers will have had that much more time to adjust to and become more comfortable with access code dialing." NPRM at 9.

- 3) BPP would supposedly focus competition in operator services towards end users and away from aggregators. NPRM at 9. (The Commission theorizes that the current practice of paying commissions to aggregators means that consumers pay higher operator service rates. Id. BPP would "redirect" OSPs towards providing better services and lower prices to end users. Id.)
- 4) BPP allegedly might increase parity in the operator services marketplace. NPRM at 9. (At present, according to the Commission, the dialing arrangements for payphones tend to favor the OSP with the largest number of customers, i.e., AT&T. NPRM at 9-10. The Commission believes that BPP will eliminate this disparity because every OSP would be given the same opportunity to offer customers 0+ dialing, regardless of the size of the customer base, and regardless of whether other OSPs use proprietary calling cards. Id.)
- 5) The Commission further asserts that BPP would not reduce competition by requiring an OSP to offer 1+ service in order to be designated the end user's 0+ carrier. NPRM at 10. (In other words, the 0+ presubscription theoretically would be unbundled from the 1+ choice, so users could choose different carriers for their 0+ and 1+ traffic. Id. Also, nationwide service supposedly would be unnecessary because BPP has been designed to accommodate at least two OSP

designations -- primary and secondary carriers -- for interLATA calling. Id. Thus, the Commission postulates, regional OSPs would be able to designate an alternative carrier on behalf of their customer for any areas in which they might not have originating capability. Finally, an OSP could become the customer-designated OSP for LEC-issued calling cards.⁴)

- 6) BPP allegedly has the potential to be pro-competitive. NPRM at 10. (The Commission hypothesizes that an OSP may receive "0" traffic because the caller chooses that OSP, but in many cases it is because the OSP is presubscribed to the line, and the caller is unwilling to dial an access code. Id. Under BPP, on the other hand, the choice of the caller is the only consideration. Id.)

Based on these assumptions, the Commission is now seeking comments on the costs of BPP, and how those costs are likely to affect operator service rates paid by consumers. NPRM at 11. The Commission is also now seeking comments on whether BPP would require callers to provide certain information about the call twice, NPRM at 12; how BPP will effect access times for operator service calls, id.; the effects of BPP on competition in the provision of payphones, id. at 12-13; and whether the benefits of

⁴ Consequently, if some OSPs move towards proprietary calling cards, OSPs without their own calling cards would likely be limited to LEC calling card traffic under the existing presubscription system. NPRM at 10.

BPP could be obtained through alternative, less costly technology, id. at 13. Although these issues may be important, for the most part they take the Commission's assumptions as correct. Opticom shows in these Comments, however, that they are not correct. Opticom demonstrates that BPP is not in the public interest.

II. DISCUSSION

A. CONTRARY TO THE COMMISSION'S ASSUMPTION, BPP WILL INCREASE, NOT DIFFUSE, CALLER CONFUSION

The gravamen of the Commission's defense of BPP rests upon the mistaken premise that BPP will be less confusing to the O+ caller than the present system.⁵ On the contrary, under BPP, after having many years to familiarize themselves with the present system, consumers will be forced to learn an entirely new and exceedingly complex system of calling and billing.⁶

If BPP is implemented, callers in non-equal access locations will be able to use the present O+ system in which payphones are presubscribed by the premises owner, while callers in equal access regions will be forced to use BPP. Unless consumers keep

⁵ The Commission states, for instance, that as a result of changes in the operator services industry, consumers have become confused and frustrated when making calls from public payphones. NPRM at 7.

⁶ This confusion and frustration of consumers cited by the Commission, id., will seem like utter comprehension and satisfaction compared to how confused these consumers will become if BPP is implemented.

Consumer confusion will also be increased by the Commission's proposal for LECs to implement BPP by loading into the LIDB system a primary and secondary OSP for each telephone line. NPRM at 6. Presumably, if the secondary OSP was unavailable, the consumer would have another OSP selected, and if that OSP also was unavailable, the consumer would have to select another OSP, and so on.⁷ Consumers would be forced, then, to select many OSPs for complete coverage, a confusing and unnecessary requirement. Moreover, the Commission has not indicated how consumers would choose their favorite or second favorite OSPs. A ballot, for example, with names of OSPs for consumers to choose from would contain hundreds of choices. Clearly, the Commission's BPP proposal would require that consumers face daunting and complicated OSP selection requirements.

Further, and by the Commission's and BPP supporters' own admission, the "OSP could be, but would not have to be, the carrier that the billed party has chosen for its 1+ traffic." NPRM at 5, note 13. Thus, under this scenario, not only would the consumer be required to select hordes of OSPs for complete coverage under BPP, but they would again be required to choose whether those OSPs should provide 1+ calls, or whether they should keep or select a new OSP for those calls. As if this situation was not confusing enough, the Commission has indicated

⁷ This assumes, of course, that LIDB can accommodate multiple secondary carriers.

that BPP "could be designed to permit a separate OSP designation for international calls." NPRM at 6, note 16. Thus, consumers would need to choose yet another OSP leading to even greater confusion.⁸

The addition of BPP will also confuse callers who make sent-paid calls along with O+ calls. If BPP is implemented, calling parties making sent-paid calls will still use the carrier presubscribed to the payphone. If the same party then makes a O+ call, the carrier will likely be chosen by the billed party. These conflicting results will cause confusion and frustration to payphone callers who would be much less confused if the O+ and 1+ calls used the same carrier presubscribed to the same phone.

BPP will lead to confusion among callers who dial both intrastate and interstate. Intrastate O+ calls made will be carried by the presubscribed OSP. This system will remain in effect if BPP is implemented by the Commission. Thus, for example, consumers who make a O+ local, or intrastate call followed by a O+ interstate call, will be served by two different carriers in two different manners.

On the other hand, consumers are now, more than ever, aware of how to use their carrier of choice. As a result of the MFJ

⁸ In reality, of course, to avoid this morass, consumers would end up selecting only one OSP that could cover everything. In all likelihood this will be AT&T or another carrier with nationwide coverage. This would, as discussed infra, destroy the OSP industry despite the Commission's assertion that BPP is pro competitive.

Court's orders,⁹ the BOCs and GTE have presubscribed their payphones with the premises owners. Private payphones always route 0+ calls in this way. Thus, both BOC-owned and private payphones route 0+ calls on a presubscribed basis, unless the caller selects a different carrier by using an access code. Access from payphones is consistent; it is only the presubscribed carrier that may differ between phones. In that instance, of course, pay telephone callers have access to multiple interexchange carriers through 1-800, 950-XXXX, or 10XXX access codes on a non-discriminatory basis. Furthermore, the MFJ Court, the Congress and the Commission¹⁰ have already required the BOCs to post on each of their public telephones the name of the OSP that will transmit 0+ calls from that particular unit.¹¹ Congress and the Commission have also ordered OSPs to identify themselves to callers before a call is connected.

It is clear, therefore, that the consumer now knows who is serving the telephone from which a call is made. It is also clear that if the consumer wants to use another carrier it can dial around the presubscribed carrier with access codes that have

⁹ United States v. Western Electric Co., 698 F. Supp. 348 (D.D.C. 1988); United States v. GTE Corp., C.A. No. 83-1298 (D.D.C. December 23, 1988).

¹⁰ See, the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA"), Pub. L. No. 101-435, 104 Stat. 986, which provides that users have the right to reach multiple interexchange carriers through 1-800 and 950-XXXX access codes on a non-discriminatory basis.

¹¹ See e.g., 698 F. Supp. at 366.

been in place for some time and are recognized by Congress and the Commission as acceptable mechanisms for this purpose. Consequently, BPP serves no useful purpose other than to confuse the calling public.

B. THE ENORMOUS COSTS OF IMPLEMENTING A NATIONWIDE SYSTEM OF BPP FOR ALL 0+ INTERLATA CALLS OUTWEIGHS THE PERCEIVED BENEFITS AND IS CLEARLY NOT IN THE PUBLIC'S INTEREST

1. BPP Will Destroy Competition In the Operator Services Market

The importance of competition generally to the telecommunications market hardly needs reciting here. The Commission has long and vigorously supported the introduction of such competition. It also hardly needs reciting that the reasons for competition in the telecommunications market generally are equally applicable to the specific OSP market. Despite this, the Commission is poised to wipe out the emerging competition for 0+ operator services to the obvious detriment of the public.

Since BPP would require that all calls from all payphones be handled initially by a LEC operator, independent operator services providers would be effectively shut out of the 0+ call market. In other words, because the LEC would perform all of the operator service functions necessary to transmit the call to the OSP, the only function of the OSP at that point is the recordation of billing information and the transmission of the call. All other operator service functions would and could be handled by the LEC. Moreover, callers would be unwilling to

pay for operator services charges twice on a single call, and the competitive benefits of operator services would thereby become moot. Sooner rather than later, therefore, the functions of OSPs would become monopolized by the LECs.¹²

Another reason that the proposed rule would eliminate OSP competition is found in the Commission's claim that BPP would not reduce competition by requiring an OSP to offer 1+ service, NPRM at 10, a claim that simply disregards basic consumer behavior. The Commission assumes that OSPs would not have to offer 1+ services because O+ presubscription would be unbundled from the 1+ choice. Id. The Commission also assumes that OSP nationwide service would be unnecessary because BPP has been designed to accommodate both primary and secondary carriers for interLATA calling. Id. Both of these assumptions are false because consumers faced with the easy choice of using one OSP/carrier for all nationwide and international 1+ and O+ services will not make the more difficult and confusing choice to "unbundle" 1+ and O+ services both regionally and nationwide. In other words, under BPP, the consumer will not choose separate carriers for 1+ and O+ services or separate carriers for regional or nationwide use.¹³

¹² This obvious result is highly ironic in view of the Commission's historical march toward opening up communications markets.

¹³ The Commission itself seems to feel that this will be the reaction of the consumer, i.e., the path of least resistance is to choose one carrier for all services. See, e.g., NPRM at 12.

Instead, OSPs with nationwide and 0+ and 1+ services will be selected devastating most smaller, regional OSPs.

The Commission's assertion that BPP will be procompetitive is without any basis in fact. BPP will result in the future monopolization of LECs or, at the very least, in an oligopoly of OSPs. In turn, this will lead to higher prices and reduced services for consumers.

2. The Costs of Implementing BPP Are Untenable Because of the Resulting Harm to Consumers

- a. The costs of BPP will ultimately be borne by the consumer, either directly or indirectly, in the form of higher rates for 0+ calls

The costs of research and development of LIDB and SS7 associated with BPP as well as the costs of implementing BPP¹⁴ will ultimately be paid by the consumer. Indeed, in at least one set of comments previously filed in this proceeding, it was argued that the costs of BPP should be borne by someone else.¹⁵ Moreover, monopolization of 0+ payphone calls by LECs or an oligopoly in the OSP marketplace will undoubtedly raise rates. In any event, if BPP is mandated, the OSPs will have no choice but to use LEC BPP services and the LECs would then be in the position to exact compensation for these services.¹⁶ Rather

¹⁴ Assuming that becomes feasible.

¹⁵ See e.g., NYNEX Comments at 5.

¹⁶ Cf. 0- transfer services are a case in point. The LECs offering such services intervened between the OSP and the calling party for the routing of 0- calls and then charged
(continued on next page...)

than bear these costs themselves, the OSPs will likely pass them along to the consumers. Indeed, Bell Atlantic optimistically estimates that BPP will cost more than \$150 million.¹⁷ Pactel, however, believes that implementation of BPP for Pacific Bell alone will cost more than \$200 million.¹⁸ AT&T estimates that BPP applied to AT&T's 0+ calls will cost over \$560 million.¹⁹

- b. All estimates of cost of implementation of BPP are speculative and cannot be relied upon for purposes of determining the cost of BPP to consumers

Most significant in the cost forecasting process is not the actual dollar amount that BPP implementation will cost, but the cost of BPP alternatives, i.e., the status quo. The Commission does not indicate that the costs of retaining the present system of pay phone presubscription for 0+ calling services are hurting consumers of these services, yet the comparison of the costs of BPP versus the status quo should be one of the most crucial issues in this rulemaking. Thus, the Commission does not and cannot conclude that BPP will be cheaper for 0+ call consumers;

¹⁶(...continued from previous page)
for such routing. There is no reason to believe but, to the contrary, every reason to expect that result in this instance.

¹⁷ Bell Atlantic Supp. Comments at 2; NPRM at 11.

¹⁸ Pactel Supp. Reply at 4; NPRM at 11.

¹⁹ AT&T Supp. Comments at 3; NPRM at 11.

in fact, whether the system costs \$150 million or several billion dollars, the current state of the record in the proceeding shows that BPP is expensive and that consumers will ultimately be made to pay the price of BPP. Stated differently, the consumer is financially harmed by BPP whereas the present system of handling O+ traffic has kept consumer costs low. The Commission now proposes to do away with this inexpensive system and implement a BPP system of questionable benefit to the consumer for an undetermined and perhaps undeterminable sum.

3. BPP Will Restrict Competition In More Than Just
The Operator Services Market And Lead To Less
Choices For The Consumer

As discussed above, BPP will allow the interposition of LEC provided operator services between the OSP customer and the OSP for every intrastate interLATA telephone call from a pay telephone, public or private. This involvement will completely transform the current method of processing such calls and will pejoratively effect all parties involved in the processing, transmission and billing of such calls.

- a. The independent payphone industry will be competitively disadvantaged by BPP

The Commission's proposed rulemaking would invariably have a detrimental impact on the private payphone market. IPPs manage and operate payphones in service to the public. IPPs receive coin deposits and O+ commissions received from presubscribed OSP directed O+ traffic. IPPs then pay commissions to premises

owners on 0+ and sent-paid traffic originating from each payphone. The Commission's BPP proposal, however, threatens to eliminate OSP commissions on 0+ traffic. Thus, the incentives for IPPs to provide convenient payphone services to the public would be drastically reduced.

Specifically, for instance, IPPs will be required to place payphones in areas of high-traffic and high proportions of sent-paid calling, and not in lighter-use areas. As a result, BPP will result in fewer available payphones. It will also result in callers with fewer options and more frustrations and complaints.

Additionally, independent payphones are far more sophisticated than BOC-owned telephones. Unlike BOC-owned telephones, which depend upon central office processing for most functions, independent payphones often use highly advanced and efficient distributed microprocessor store and forward technology. These "smart" telephones perform processing functions independent of the network. The telephone instrument itself collects and verifies essential billing information and transmits the call to the network as a 1+ call. These advanced functions are easily communicated to the caller and are efficient enough to enable IPPs to charge discounted rates.

These innovations and more such as equipment that will support facsimile transmission, and provide CRT and hard copy access to information services have been the hallmark of IPPs.

If IPPs are forced by the Commission to route all 0+ calls to the LECs, the revenues that support such independent payphone innovation will be substantially cut.

OSPs compete for traffic from IPPs with commissions that ultimately assist IPP growth and equipment development. If all IPP traffic is routed to the LECs and then to the billed party's IXC, the economic base for this segment of the market will be lost because commissions will be superfluous. The entire IPP industry will be hobbled while the LECs receive a windfall. The efficiencies and advanced services IPPs support will thereby be lost to consumers. Moreover, both manufacturers and owners of IPP equipment will face immediate obsolescence of equipment approved under Part 68 of the Commission's Rules unless that equipment can be modified to route to the BOC operator system.

- b. BPP will restrict, if not destroy, competition from small OSPs

The majority of OSPs offer regional services. Although these carriers have nationwide termination capabilities, they are restricted to specific geographic regions for the origination of calls. Under the present system of processing 0+ calls, such carriers can compete for any traffic originating within their service areas. The capability of regional OSPs to earn revenue from this traffic will be seriously curtailed, if not completely eliminated by the imposition of BPP.

Regional OSPs will lose 0+ traffic originating in their regions by out-of-region callers who will, in most instances,

bill the call to an out-of-region number. Additionally, regional OSPs will have a limited opportunity to process calls placed by their 1+ customers from out-of-region locations, because they cannot originate such traffic. As a result, the revenues of these OSPs will be radically reduced and only the largest OSPs, with large nationwide capabilities, will be able to survive.

The Commission responds to this obvious problem by suggesting that the BPP portion of the LIDB "would contain a secondary OSP choice for calls originating in areas where the primary OSP was unavailable. This would enable customers to select a small, regional OSP as their primary OSP without losing the ability to originate O+ calls in areas that their primary OSP did not serve." NPRM at 6, note 16.

As discussed above, consumers will not choose a small regional OSP as their primary OSP precisely because the regional OSP cannot originate O+ calls nationwide. Consumers of O+ services, like most people, want what is easiest for them to use. Instead of selecting an unwieldy herd of OSPs to cover O+ services in different regions, consumers will naturally choose the large OSP operating nationwide as their only OSP. While the Commission pretends that primary/secondary OSP selection will yield competitive results, the reality is that BPP will devastate smaller OSPs.

Regional OSPs, however, play an important role in the working of the competitive marketplace. They have been aggressive competitors providing appealing pricing and service

options. The proposed rulemaking by the Commission suppresses this competition and in its place would institute an oligopoly of only the largest nationwide carriers.

- c. Small LECs will be forced to implement LIDB interconnection and SS7 to provide 0+ access from payphones if BPP is mandated by the FCC

The Commission has not indicated how a BPP plan can be implemented in areas served by such independent LECs rather than BOCs. This is a significant oversight by the Commission as these LECs may not be equipped or have not made plans to use LIDB, nor may they be committed to the introduction of SS7. The introduction of SS7, for example, is an expensive proposition that is still under study by the BOCs. Because the costs of SS7 deployment are so high, and its timing so uncertain, there is no basis for assuming that the small independent LECs will introduce that technology at any time in the near future. Indeed, it may end up not being effective for the BOCs. Thus, the timetable for introduction of SS7 technology on a nationwide basis cannot even be reasonably projected at this time.

If the Commission does not retreat from its tentative conclusions, the potential adverse impact on the small independent LECs and their customers will be enormous. Mandatory BPP would apply to all payphones. Small independent LECs would be forced to develop connections with the BOCs LIDB and SS7 systems or to expend substantial amounts of capital and resources to put separate systems in place. Without significant benefit to

consumers, requiring the small independent LECs to incur these costs is wasteful.

- d. Alternative billing methods may not be possible under a BPP plan

In theory, under BPP, 0+ calls would generate a query to the LIDB to determine which OSP should process the call. It remains unclear whether credit card numbers and all OSP calling card numbers can be loaded into the LIDB database.

More generally, under BPP, billing flexibility currently enjoyed by consumers will be eliminated. Callers will be able to rely only on those billing methods that can be incorporated into the BPP database rather than the automated call processing to which the public is now accustomed. Even if the BOCs attempt to cure this problem by accepting alternative billing methods using live operators, the caller will become inconvenienced and confused by such a process. Thus, BPP will limit, not expand as the Commission has indicated, options available to users of 0+ services.

C. COMMISSION EVALUATION OF BPP IS PREMATURE AND SHOULD BE DEFERRED

1. BPP Cannot Be Implemented Because Technological Hurdles Have Not Been Cleared

Even assuming that LIDB is available for BPP, other technical drawbacks will remain. Verification by the BOCs of which OSP should handle each call will not only be more expensive, it will also increase the time needed for call